



## The Atchison, Topeka and Santa Fe Railway Company



1700 East Golf Road  
Schaumburg, Illinois 60173-5860

Direct Dial: (708) 995-6819  
Facsimile: (708) 995-6846

0100351061

PLEASE STAMP AND RETURN TO SANTA FE

August 30, 1994

RECORDED 18958

AUG 31 1994 1 55 PM

INTERSTATE COMMERCE COMMISSION

Mr. Vernon A. Williams  
Acting Secretary  
Interstate Commerce Commission  
12th and Constitution, N. W.  
Washington, DC 20423

Re: The Atchison, Topeka and Santa Fe Railway Company  
Recordation of Locomotive Lease (Interim User Agreement) Dated  
April 11, 1994, with General Electric Company

Dear Mr. Williams:

Enclosed herewith please find an original and one (1) counterpart of the document described below to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is an Interim User (Locomotive Lease) Agreement dated as of April 11, 1994, between General Electric Company ("Lessor") and The Atchison, Topeka and Santa Fe Railway Company ("Lessee"), a primary document.

The name and addresses of the parties to this document are:

Lessor:

General Electric Company  
2901 East Lake Road  
Erie, Pennsylvania 16531

Lessee:

The Atchison, Topeka and Santa Fe Railway Company  
1700 East Golf Road  
Schaumburg, Illinois 60173-5860

LICENSING BRANCH

AUG 31 1 50 PM '94

RECEIVED  
OFFICE OF THE  
SECRETARY

CNS\EQUIP\TR\SERIES\BB.COR

A Santa Fe Pacific Company

**Interstate Commerce Commission**  
Washington, D.C. 20423

8/31/94

OFFICE OF THE SECRETARY

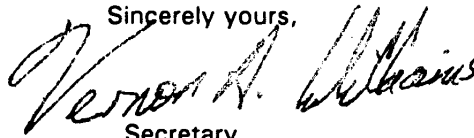
Craig N. Smetko  
General Attorney

The Atchison, Topeka & Santa Fe RYW Co.  
1700 East Golf Road  
Schumburg, Illinois 60173

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions  
of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303,  
on 8/31/94 at 1:55pm, and assigned  
recording number(s). 18958

Sincerely yours,



Secretary  
SIDNEY L. STRICKLAND, JR.

Enclosure(s)

RECORDATION NO. \_\_\_\_\_ FILED 1425

AUG 31 1994 -1 55 PM

INTERSTATE COMMERCE COMMISSION

## INTERIM USER AGREEMENT

18958

RECORDATION NO. \_\_\_\_\_ FILED 1425

AUG 31 1994 -1 55 PM

INTERSTATE COMMERCE COMMISSION

By and between

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

AND

GENERAL ELECTRIC COMPANY

Effective as of April 11, 1994

THIS AGREEMENT, dated as of April 11, 1994, between GENERAL ELECTRIC COMPANY, a New York corporation ("GE") and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation ("ATSF").

WITNESSETH:

WHEREAS, GE and ATSF contemplate entering into an agreement (the "Purchase Agreement") calling for GE to manufacture and deliver to ATSF, and ATSF to accept and pay for, 50 Dash 9-44 CW locomotives to bear road numbers 650-699, inclusive (collectively, the "Locomotives"); and

WHEREAS, ATSF intends to finance the purchase of the Locomotives from GE pursuant to one or more permanent forms of financing, or to lease the Locomotives (the "Financing"), but delivery of the Locomotives is scheduled to begin prior to the time ATSF will have completed said Financing; and

WHEREAS, ATSF desires that it be permitted to use the Locomotives pending establishment of such Financing and the purchase under the Purchase Agreement, solely as a bailee thereof, and GE is willing to grant such temporary custody and possession to ATSF upon the terms and conditions hereinafter provided;

NOW THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

1. GE, as lessor, hereby agrees to deliver the Locomotives to ATSF, as lessee, FOB GE's Erie, Pennsylvania plant, as of the date each of them is released from manufacturing, for acceptance by ATSF in Joliet, Illinois. ATSF covenants to GE that the Financing will be established, and the purchase price for the Locomotives paid as required by the Purchase Agreement. Except for those provisions of this Agreement which in order to be given effect should survive termination, this Agreement shall automatically terminate with respect to a Locomotive upon the first to occur of (a) March 31, 1995, or (b) the date the purchase price of a Locomotive is paid to GE, in either event without further action by or notice to either party hereto.

2. Upon receipt of each Locomotive in Joliet, Illinois, ATSF's representative shall execute a Certificate of Acceptance, in the form of Exhibit A hereto, acknowledging the receipt of delivery of each such Locomotive under this Agreement. During the term hereof for so long as the purchase price shall not have been paid, title to the Locomotives shall remain in GE with ATSF's rights and interests therein being solely that of possession, custody and use as bailee hereunder. Transfer of title shall be effected only at the time of GE's delivery of bills of sale to the party which has paid the purchase price therefor pursuant to the Purchase Agreement. The parties agree that upon notice from ATSF this Agreement may be terminated prior to the date to be specified in the Purchase Agreement, if contemporaneously with any such termination the purchase under the Purchase Agreement is consummated and the purchase price and all rent due hereunder is paid to GE.

3. On the date this Agreement terminates with respect to any Locomotive, ATSF agrees to pay to GE, as rent for such Locomotive, a sum calculated as follows:

(a) For the period from the date hereof until the 30th day after the average delivery date of the Locomotives, there shall be no rent, and the provisions of subsections (b) and (c) below shall only apply after the 30th day after the average delivery date;

(b) For the period from the 30th day after the average delivery date of the Locomotives to December 15, 1994, the rent shall be \$146.00 per day; and

(c) For the period from December 16, 1994 to March 31, 1995, the rent shall be equal to \$227.89 per day per Locomotive, provided, however, that if the prime rate charged by Citibank N.A. (the "Prime Rate") for any such day shall be less than seven and one-half percent (the "Base Rate"), the daily rent shall be reduced by \$0.162 for each basis point that the Prime Rate is less than the Base Rate, and if the Prime Rate for a day shall be greater than the Base Rate, the daily rent shall be increased by \$0.162 for each basis point that the Prime Rate is greater than the Base Rate.

4. ATSF shall permit no liens or encumbrances (other than the usual interchange of traffic rules) of any kind to attach to the Locomotives, and it agrees to pay any and all taxes (excluding any tax measured by GE's net income and any franchise, capital, net worth or similar tax imposed on GE, or any tax imposed in lieu of any of the foregoing), fines, charges and penalties that may accrue or be assessed or imposed upon the Locomotives or GE, because of GE's ownership or because of the use, operation, management or handling of the Locomotives during the term of this Agreement. The obligations of ATSF described in this Section 4 shall survive termination of this Agreement.

5. ATSF shall cause the Locomotives to be covered by a Maintenance Agreement between GE and ATSF and shall, at its option, repair or promptly pay to GE the purchase price (as set forth in the Purchase Agreement) for any of the Locomotives which may be damaged or destroyed by any cause during the term of this Agreement.

6. ATSF acknowledges that it takes its possessory interest in the Locomotives subject to those provisions of the Purchase Agreement relating to Warranty, exclusion of certain warranties, remedies (and limitations of remedies) and limitation of liability and indemnities.

7. If during the term of this Agreement any markings on the Locomotives shall at any time be removed, defaced or destroyed, ATSF shall promptly cause the same to be restored or replaced.

8. In the event ATSF shall fail to perform any of its obligations hereunder, GE may, in addition to any other remedies it may have, enter upon the premises of ATSF or such other premises where the Locomotives may be and take possession of all or any

Locomotives, and thenceforth hold, possess and enjoy the same free from any right of ATSF, or its successors or assigns. In such event, GE may use the Locomotives for any purposes whatsoever, and may sell and deliver the Locomotives to others upon such terms as GE may see fit in its sole discretion, it being understood and agreed that, without limiting the foregoing, ATSF shall be liable to GE for an amount equal to all losses, costs and expenses of GE incident to such sale including, but not limited to, the expenses of withdrawing the Locomotives from the service of ATSF, providing for the care and custody of the Locomotives, preparing the Locomotives for sale, and selling the Locomotives. ATSF shall pay the foregoing amounts from time to time upon demand by GE.

9. ATSF and GE each represent and warrant to the other that:

(a) It is a duly organized and validly existing corporation in good standing under the laws of its state of incorporation, is duly qualified to do business in such jurisdictions as are necessary to carry out the transactions contemplated by this Agreement, and has power and authority to own its properties and carry on its business as now conducted;

(b) The execution and delivery of this Agreement is within its corporate authority, has been authorized by proper corporate proceedings and will not contravene any provision of law or of its charter or by-laws nor contravene or constitute a default under the provisions of any agreement or other instrument binding upon it, and this Agreement is a valid and binding obligation of it enforceable against it in accordance with its terms, subject to applicable insolvency, bankruptcy or moratorium laws and general equitable principles;

(c) The rights of GE as herein set forth and the title of GE to the Locomotives are senior to the lien of any mortgage, security agreement or other instrument to which the party making the representation or warranty is a party; and

(d) No governmental authorizations, approvals or exemptions are required of it for the execution and delivery of this Agreement or for the validity and enforceability hereof against it or the bailment of the Locomotives hereunder on the terms and conditions provided herein, or, if any such authorizations are required of it, they have been obtained; and if any such shall hereafter be required of it, they will promptly be obtained.

10. ATSF agrees that the execution by GE of this Agreement or the delivery by GE of the Locomotives as contemplated by this Agreement, shall not relieve ATSF of its obligations to accept, take and pay for the Locomotives in accordance with the terms of the Purchase Agreement.

11. The execution of a Certificate of Acceptance in the form of Exhibit A hereto pertaining to any such Locomotive shall constitute acceptance of such Locomotive hereunder, and any warranty or other time period set forth in the Purchase Agreement

applicable to such Locomotive shall be deemed to commence from the date of GE's release of the Locomotives from manufacturing in Erie, Pennsylvania.


12. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

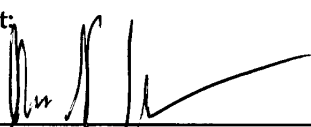
IN WITNESS WHEREOF, each party hereto has caused this Interim User Agreement to be executed by its authorized representative in Schaumburg, Illinois as of the 30<sup>th</sup> day of August, 1994.

Attest:


THE ATCHISON, TOPEKA  
AND SANTA FE RAILWAY  
COMPANY

  
Assistant Secretary

By:   
Douglas M. Sizemore, Vice  
President and Chief Mechanical  
Officer

Attest:   
Attesting Secretary

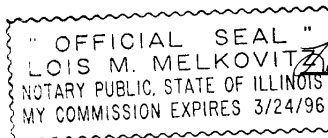
GENERAL ELECTRIC COMPANY

By:   
Robert J. Koontz, Manager

State of Illinois )  
 ) ss:  
County of Cook )

On this 30th day of August, 1994, before me personally appeared Douglas M. Sizemore, to me personally known, who, being by me duly sworn, says that he is Vice President and Chief Mechanical Officer of The Atchison, Topeka and Santa Fe Railway Company, that the foregoing instrument was executed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]



Lois M. Melkovitz  
Notary Public

My Commission expires:

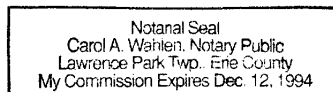
Commonwealth of Pennsylvania )  
 ) ss:  
County of Erie )

On this 25th day of August, 1994, before me personally appeared Robert J. Koontz, to me personally known, who, being by me duly sworn, says that he is Manager, GE Transportation Systems of GENERAL ELECTRIC COMPANY, that the foregoing instrument was executed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

Carol A. Wahlen  
Notary Public

My Commission expires:



## EXHIBIT A

### Certificate of Acceptance

This is to certify that the following equipment covered by that certain Purchase Agreement dated as of April 11, 1994 has been accepted in Joliet, Illinois by The Atchison, Topeka and Santa Fe Railway Company ("ATSF") under the Interim User Agreement dated as of April 11, 1994 between General Electric Company and ATSF this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

### Description of Equipment

#### Number of Units

#### Description

#### Road Numbers

Model Dash 9-44 CW

THE ATCHISON, TOPEKA AND  
SANTA FE RAILWAY COMPANY

By: \_\_\_\_\_

Title \_\_\_\_\_